

VICTIMS' RIGHTS — Law enforcement agency and prosecution have duty to inform victims of their rights — Revised 3/2010

A.R.S. § 13-4405(A) requires the law enforcement agency investigating the crime to give the victim a form advising the victim of his or her rights "as soon after the detection of a criminal offense as the victim may be contacted without interfering with an investigation or arrest." The agency must provide the victim with a form allowing the victim "to request or waive applicable rights to which the victim is entitled, on request." *Id.* Once a victim has used that form or otherwise requested notice, the law enforcement agency must inform the victim when the defendant is arrested and when and where the defendant's initial appearance will be. A.R.S. §§ 13-4405.01, 13-4406. If the defendant appears pursuant to a summons, "the prosecutor's office shall, on receiving such information, provide the notice to the victim." A.R.S. § 13-4406.

The prosecutor has the primary responsibility to keep victims informed of their rights. Rule 39(c)(1), Ariz. R. Crim. P., provides:

The victim shall . . . have the right to the assistance of the prosecutor in the assertion of the rights enumerated in this rule or otherwise provided for by law. The prosecutor shall have the responsibility to inform the victim, as defined by these rules, of the rights provided by these rules and by law, and to provide the victim with notices and information which the victim is entitled by these rules and by law to receive from the prosecution.

Further, under A.R.S. § 13-4408(A)(1), the prosecution must inform victims of their rights under "Article II, § 2.1, Constitution of Arizona, any implementing legislation and court rule." The prosecution must also inform victims of the charges against the defendant and provide "a clear and concise statement of the procedural steps involved in a criminal prosecution." A.R.S. § 13-4408(A)(2). If

for any reason the prosecution decides not to proceed with a prosecution, the prosecutor must "notify the victim and provide the victim with the reasons for declining to proceed with the case. The notice shall inform the victim of his right on request to confer with the prosecutor before the decision not to proceed is final." A.R.S. § 13-4408(B). Further, the prosecution must "give notice to the victim in a timely manner of scheduled proceedings and any changes in that schedule." A.R.S. § 13-4409.

Within fifteen days after a defendant is convicted or acquitted, the prosecution must give the victim "notice of the criminal offense for which the defendant was convicted or acquitted or the dismissal of the charges against the defendant." A.R.S. § 13-4410(A). If the defendant is convicted, the prosecution must inform the victim of the function of the presentence report and how to contact the probation officer. The prosecution must also inform the victim that the victim has the right to make a victim impact statement; that the victim may read the presentence report; and that the victim has a right to be present and be heard at the defendant's sentencing. A.R.S. § 13-4410(B). The prosecution must also inform victims of the appropriate matters to include in a victim impact statement. A.R.S. § 13-4410(C).

Within fifteen days after sentencing, the prosecution must notify the victim what sentence the court imposed on the defendant. A.R.S. § 13-4411(A). The prosecution must also allow the victim an opportunity to request notice of "all post-conviction review and appellate proceedings, all post-conviction release proceedings, all probation modification proceedings that impact the victim, all

probation revocation or termination proceedings, any decisions that arise out of these proceedings, all releases and all escapes." A.R.S. § 13-4411(B).

When a defendant is sentenced to prison, the prosecution must inform the victim of the victim's right to ask that the victim and the victim's family and household not "receive mail from the inmate who was convicted of committing a criminal offense against the victim." A.R.S. § 13-4411.01(A). When a victim makes such a request, the Department of Corrections must inform the defendant that he will be sanctioned if he sends mail to the victim or the victim's family or household. A.R.S. § 13-4411.01(B).

When the victim has requested notice, the sheriff or the jail must notify the victim if the prisoner is released. A.R.S. § 13-4412(A). The custodial agency must "immediately" give the victim notice by "any reasonable means" if the prisoner escapes from custody, and again when the prisoner is re-arrested. And when the victim has requested post-conviction notice, the Department of Corrections must within thirty days give the victim the prisoner's earliest release date and, at least fifteen days before his release, notice of the release. The Department of Corrections must also inform the victim within fifteen days after the prisoner dies. A.R.S. § 13-4413(A).

The victim has the right to be present and be heard at any proceeding at which post-conviction release from confinement is being considered, whether that release is to work furlough, parole, or to the community. A.R.S. § 13-4414. The victim also has the right to notice of any proceeding in which the court is asked to terminate or modify the defendant's probation. A.R.S. § 13-4415(A). The

court must notify the victim when the defendant's probationary terms are to be modified, but only "if the modification affects restitution or incarceration status or the defendant's contact with or the safety of the victim." A.R.S. § 13-4415(B).

If the victim has requested notice, a mental health treatment agency must notify the victim before releasing a defendant who has been ordered into mental health treatment by the court. A.R.S. § 13-4416(A). Regardless of whether the victim has requested notice, the agency must notify the victim if the defendant escapes from the agency, and also when the defendant is readmitted. A.R.S. § 13-4416(B).

The victim is required to give the prosecution notice of the victim's invocation of the victim's rights, using a form provided by the prosecuting agency. In addition, the victim has a duty to keep the prosecution informed of any changes in telephone number and address: "If the victim fails to keep the victim's telephone number and address current, the victim's request for notice is withdrawn." A.R.S. § 13-4417. However, the victim can always decide to opt in to receive notice by giving the prosecuting agency the victim's current telephone number and address. *Id.*